

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONTE WALKER,

Defendant.

DECISION AND ORDER
18-CR-237-A

This case was referred to Magistrate Judge Michael J. Roemer pursuant to 28 U.S.C. § 636(b)(1) for the conduct of pretrial proceedings. On January 6, 2021, the Magistrate Judge filed a Report, Recommendation and Order that recommends that defendant Walker's motions to suppress evidence seized in violation of the Fourth Amendment and his motion to dismiss a certain penalty enhancement due to pre-indictment delay in violation of the Fifth Amendment both be denied. Dkt. No. 154.

Defendant Walker filed objections to the recommended findings and conclusions of the Magistrate Judge. Dkt. No. 158. The United States responded. Dkt. No. 161. Oral argument was held on March 17, 2021.

Defendant Walker also appeals from the Order of the Magistrate Judge to authorize an *ex parte* and sealed submission of the United States in response to an oral-argument inquiry of the Magistrate Judge regarding the circumstances of the possible destruction of a potentially relevant video recording. See Dkt. No. 151; Dkt. No. 158. Alternatively, the defendant now seeks disclosure of the *ex parte* and sealed

submission subject to such terms of a protective order as may be necessary and appropriate. The matters were deemed submitted on March 17, 2021.

Pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Crim. P. 59(b)(3), the Court reviews *de novo* the portions of a report and recommendation to which objections are raised. Upon *de novo* review of the objections of defendant Walker, it is hereby

ORDERED that the motion of defendant Walker to suppress evidence (Dkt. Nos. 80, 118, 119) is denied for the reasons stated in the Report, Recommendation and Order, and it is further

ORDERED that the motion of defendant Walker to dismiss for pre-indictment delay in violation of the Fifth Amendment a penalty enhancement in Count 2 of the Superseding Indictment based upon an alleged overdose death during a narcotics conspiracy (Dkt. Nos. 80, 118, 119) is denied without prejudice to renewal if actual prejudice caused by the alleged delay emerges before the close of proof at trial.

Pursuant to 28 U.S.C. § 636(b)(1)(A) and Fed. R. Crim. P. 59(a), the Court decides appeals of a magistrate judge's orders by a clearly erroneous or contrary to law standard of review. Upon review of the Magistrate Judge's Order at Dkt. No. 151 to authorize the *ex parte* and sealed submission of the United States at Dkt. No. 152, it is hereby

ORDERED that the Order at Dkt. No. 151 authorizing the *ex parte* and sealed submission of the United States at Dkt. No. 152 is affirmed, and it is further

ORDERED that defendant Walker's request to modify the Order at Dkt. No. 151 to permit disclosure of the *ex parte* and sealed submission of the United States at Dkt. No. 152 to defense counsel subject to the terms of a protective order as may be

necessary and appropriate is denied. The Court finds that the information publicly disclosed in the letter of the United States at Dkt. No. 153 about the circumstances of the possible destruction of a video recording is presently sufficient in the context of the issue of alleged pre-indictment delay. The United States is again reminded of its obligations to reassess its disclosure obligations as issues may develop, and it finally

ORDERED that counsel for the parties shall confer about their availability for trial and be prepared to schedule a date for trial when they appear for the oral argument that is scheduled May 5, 2021.

SO ORDERED.

s/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: April 30, 2021